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SEATTLE WA 98111-1208

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OFFICE OF PETITIONS

In re Patent No. 7,548,846 : DECISION ON REQUEST
Robert Monster : FOR
Issue Date: June 16, 2009 : RECONSIDERATION OF
Application No. 10/031,263 : PATENT TERM ADJUSTMENT
Filed: October 19, 2001 : and
Attorney Docket No. 56739-8002: NOTICE OF INTENT TO ISSUE
.US00 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on August 13, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand five hundred twenty-nine (1529) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand five hundred forty-five (1545) days**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on October 20, 2004 and ends on November 1, 2007, the day before the first RCE was filed. See 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 1108 not 1109 days, and the B delay considering the 427 days of overlap is 681 days¹. Further, the Office did not fail to account for 250 days of applicant delay as stated in the petition. However, patentee's

¹ The 12 days accorded at issuance for B delay were removed and the 681 days was entered pursuant to this decision.

calculation did fail to account for the 17 days of patent term adjustment accrued for Office delay in issuing the patent later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied. See 37 CFR 1.702(a)(4). It is noted that this 17 day period does not overlap as the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) ends with the filing of the RCE as the three-year time frame specified in 35 U.S.C. 154(b)(1)(B) does not include the period subsequent to the filing of the RCE. 35 U.S.C. 154(b)(1)(B)(i). In view thereof, the correct patent term adjustment is 1545 (1097 + 1108 - 427 + 17 - 250), not 1529 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand five hundred forty-five (1545) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,548,846 B1

DATED : June 16, 2009

DRAFT

INVENTOR(S) : Monster

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 876 days

Delete the phrase "by 876 days" and insert – by 1545 days--